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720 Albany Street
Boston, MA 02118

March 1, 2004

The Honorable Mitt Romney
State House
Office of the Governor
Room 360
Boston, MA 02133

Re. Organ Procurement: Procedures of Concern

Dear Governor Romney:

I write to alert you to serious issue regarding organ procurement in the Commonwealth of Massachusetts. Please see the attached memorandum that I circulated within the OCME and that I also sent to the New England Organ Bank (NEOB). The situation described in the memorandum needs to be investigated. I have redacted the name of the victim in the interests of maintaining his family's privacy, but you may obtain it as an elected official directly from the OCME.

The procedures for organ procurement must be scrupulously followed in order to avoid situations where, for example, organs are procured causing unjustified loss of life by the prospective donor.

Thank you for hearing my views on this important political matter.

Yours Sincerely,

//s// Abraham T. Philip, M.D.

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cc. John Cronin
Chief Administrative Officer
Office of the Chief Medical Examiner
720 Albany Street
Boston, MA 02118



MEMORANDUM**THE STRANGE DEATH OF [REDACTED] (04 - 324)**

It was the night of January the 30th, when around 8 p.m. I received a call from Traci (front desk) regarding the possibility of organ donation on the victim of a vehicular accident. My response was the usual clear it with DA regarding charges, get consent from family etc., when Traci gave me a heads up that person was not dead and would not be brain dead (following usual protocol), but would be pronounced dead by asystole, and then would be put back on life support and organ harvest was to proceed.

Spoke a little later with Larry from NEOB, who repeated essentially the same criteria of asystole for brain death. I explained the procedure was highly irregular as I had not heard the criteria of asystole for pronouncement of death. I asked why the routine protocol of brain death could not be applied. Larry's reply was that the body would be in permanent vegetative state and delay in harvest would cause deterioration of organs and so this procedure was being followed. I still expressed my discomfort with the procedure, to which Larry replied it had been cleared with Jackie Faherty and Richard Evans knows all about. I explained that Jackie was on maternity leave and I had no way to confirm that the process had been cleared by her. I emphatically mentioned it to Larry that I was not approving organ harvest, and he was welcome to talk to Richard Evans for consent. Later that night, Chris from NEOB called Traci to inform Richard Evans had approved organ donation. There were no charges and a view and tox was done on the case on first October. See case records for additional information if required.

A review of the medical records (pruned for storage purposes – but relevant portions retained,) indicate that the deceased was involved in a head on collision on 1/27/04 and after prolonged extrication was med flighted to a Boston area hospital. He suffered closed blunt head trauma and left femur fracture. CT scan of head revealed frontal, parietal, occipital and midbrain hemorrhage besides subdural hemorrhage. Raised intracranial pressures were periodically maintained by Manitol infusions. The deceased was put on DNR/DNI on 1/29/04 at 858.

On 1/29/04 during a family conference the topic of withdrawal of care (read stoppage of Manitol and extubation) was broached. The family was uncomfortable initially with this. On 1/30/04, neurological evaluation revealed no improvement and limited brainstem function. At 1530 on 1/30/04 the family consented to withdrawal of life support. Later ventilation was removed, patient became asystolic, after remaining asystolic for 5 minutes, was pronounced dead at 12.58, later a morphine drip started, and organ procurement initiated.

MEDICAL EXAMINER COMMENTS

I was and remain very uncomfortable with the way this case was handled. The criteria for brain death are well documented in standard textbooks, have stood the test of legal challenges and have been around for nearly two decades now, for everybody to be comfortable with the protocols, criteria and safeguards against abuse. However, the status of pronouncement of death in Permanent Vegetative state is still an area with murky laws and inadequate interpretations. The Florida case where withdrawal of care was obtained by the husband of a woman and fought tooth and nail by her parents is a case in point. Things may have changed in the last few years since I kept up legal briefs and case laws in these cases, but my understanding still is that the picture is still not clear. And pressing a medical examiner at 8.30 p.m. for a decision is not appropriate. If the matter was brewing since the 29th, a call during morning hours of the 30th, could have helped obtaining clarification from appropriate legal authorities.

If as it appears, there should be no objection to harvest, then threatening tone used by Larry of the NEOB was highly inappropriate. If again as the NEOB claims, the procedures were claimed by Jackie Faherty, then an educational session should have been scheduled with legal, ethical and medical experts from the NEOB, briefing the doctors, answering concerns and allaying doubts. In the absence of this proactive step, to go over the top to the Chief and calling back that he approves again smacks of despotism which is intolerable. The medical examiners office has no information of the safeguards in place, no documentation of the families consent, only instructions from high almighty the NEOB.

I wish to remind all of you that Burke and Hare did not happen so far back in the past that no one remember, I most certainly do, though I frequently blank out on the name of the physician (McPherson) who was vilified during the trial. In the case of [REDACTED], there were no charges, however, my concern is that the situation could be repeated in a homicide case in permanent vegetative state. I hope this Memo prompts a wider discussion between the NEOB, Medical Examiners, District Attorneys, etc., so that everybody is comfortable with the decisions taken.

Respectfully submitted,

Abraham Philip M.D.